SUPREME COURT, U.S.
FILED
MAY

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1475

FRED E. WILSON - - - - - - Petitioner

versus

MERRITT S. DIETZ, JR., Commissioner, Department of Economic Security, Division of Public Assistance, Commonwealth of Kentucky - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Wilson v. Dietz, Com'r, etc.)
(U.S.C.A. 6th Cir. No. 71-1144)

ROBERT L. BERTRAM
West Cumberland Avenue
Jamestown, Kentucky 42629

MARTIN R. GLENN
Legal Aid Society of Louisville
422 West Liberty Street
Louisville, Kentucky 40202

Counsel for Petitioner

WESTERFIELD-BONTE CO., INC., 619 W. KENTUCKY, LOUISVILLE, KY.

INDEX

PAGE

Opinion Below 1

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved ... 2–3

Statement of the Case 3–4

Reasons for Granting the Writ 5–9

1. The Decision Below Conflicts With the Decisions of This Court 5–7
2. The Instant Case Presents a Justiciable Controversy That Should Be Resolved by This Court .. 7–9

Conclusion 9

Appendix 1 (Opinion and Judgment of the Court of Appeals) 11–15

Appendix 2 (Order of the District Court) 16–18

CITATIONS

Cases:

	PAGE
Bell v. *Burson*, 402 U. S. 535	6
Goldberg v. *Kelly*, 397 U. S. 254	5, 6, 7, 8
Richardson, Secy., etc. v. *Wright*, ___ U. S. ___, 31 L. Ed. 2d 151	7
Wheeler v. *Montgomery*, 397 U. S. 280	6
Wisconsin v. *Constantineau*, 400 U. S. 433	6

Miscellaneous:

United States Constitution, 14th Amendment	2–3
28 United States Code, Sec. 1343	3
42 United States Code, Sec. 1983	3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. _____

FRED E. WILSON - - - - - *Petitioner*

v.

MERRITT S. DIETZ, JR., Commissioner, Department of Economic Security, Division of Public Assistance, Commonwealth of Kentucky - - - - - - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, Fred S. Wilson, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 24, 1972.

OPINION BELOW

The opinion of the Court of Appeals for the Sixth Circuit, not yet reported, appears as Appendix 1 hereto. The order of the District Court for the Western District of Kentucky appears as Appendix 2 hereto.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 24, 1972. A timely petition for rehearing, together with a suggestion of the appropriateness of a rehearing *en banc*, was denied on April 4, 1972, and this petition for certiorari was filed within ninety (90) days of that date. The mandate of the Court of Appeals was issued on April 28, 1972. This Court's jurisdiction is invoked under 28 United States Code, Section 1254(1).

QUESTIONS PRESENTED

1. Whether a state welfare recipient must object to a proposed termination of his or her grant, and request a hearing thereon, before being entitled to a fair evidentiary pre-termination hearing.

2. Whether a state welfare recipient is entitled to continue to receive benefits under his or her grant prior to a final and unappealable administrative decision based upon a fair evidentiary pre-termination hearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Fourteenth Amendment, Section 1:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws:

42 United States Code, Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 United States Code, Section 1343:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (3) To redress the deprivation, under color of State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

STATEMENT OF THE CASE

The instant action was brought under the Civil Rights Act (28 U. S. Code, Sec. 1343; 42 U. S. Code, Sec. 1983) by the petitioner Wilson in the United States District Court for the Western District of Kentucky as a class action on behalf of himself, individ-

ually and as representative of a class consisting of all other persons whose public assistance grants were terminated by the respondent Dietz, Commissioner of Kentucky Department of Economic Security, Division of Public Assistance, without a fair evidentiary pre-termination hearing.

The District Court ordered that the petitioner, and all other public assistance recipients who had objected to discontinuance of their Aid for Family With Dependent Children grant and requested a hearing thereon, be restored to the eligibility rolls and receive normal grant payments, retroactively and prospectively, until such time that the grant is "terminated at the administrative level by providing . . . an opportunity for a pre-termination evidentiary hearing and a hearing if such is requested." (See Appendix 2.)

The petitioner appealed to the United States Court of Appeals for the Sixth Circuit from so much of the order of the District Court that provides that a welfare recipient is not entitled to a fair evidentiary pre-termination hearing unless he or she objects to discontinuance of the grant and requests a hearing thereon. The petitioner also appealed from so much of the order that fails to provide that normal payments must be continued to a welfare recipient until the grant is terminated by a final and unappealable decision based upon a fair evidentiary pre-termination hearing.

The United States Court of Appeals for the Sixth Circuit affirmed the order of the District Court in its entirety (See Appendix 1).

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts With the Decisions of This Court

The decision below is an erroneous interpretation of the decision of this Court in *Goldberg* v. *Kelly,* 397 U. S. 254, 25 L. Ed. 2d 287, 90 S. Ct. 1011. That case can not be interpreted as merely giving a state welfare recipient an opportunity to take affirmative action to obtain a fair evidentiary pre-termination hearing.

The *Goldberg* case clearly, unequivocally and emphatically places upon the state agency an affirmative obligation to comply with each and all of the following due process requirements: Give to the recipient written notice of the proposed termination and the reasons assigned therefor; give to the recipient written notice of a fair evidentiary pre-termination hearing to be held at a meaningful time and place; give to the recipient effective opportunity to be present at the hearing, and to defend, present evidence, and confront and cross-examine adverse witnesses; render a decision by an impartial person, based upon legal rules of evidence, with a written statement of evidence and conclusions reached. Each and all of those steps were held necessary to constitute the procedural due process required by the Fourteenth Amendment of the Constitution of the United States in terminating a state welfare grant. Failure to comply with any one of those steps constitutes a denial of due process of law as guaranteed by the constitutional provision referred to

above. That is the real holding of this Court in the *Goldberg* case.

This Court followed the *Goldberg* case doctrine in the companion case of *Wheeler* v. *Montgomery,* 397 U. S. 280, 25 L. Ed. 2d 307, 90 S. Ct. 1026, decided on the same day.

This Court has subsequently applied the *Goldberg* case doctrine in the following cases: *Bell* v. *Burson, Director Georgia Department of Public Safety,* 402 U. S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971), invalidating a state statute providing for suspension of a driver's license and automobile registration prior to a fair evidentiary hearing as to the reasonable probability of a judgment being obtained against the licensee. *Wisconsin* v. *Constantineau,* 400 U. S. 433, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971), invalidating a state statute providing for the posting of names of excessive drinkers without a prior fair evidentiary hearing.

None of the above decisions imposed upon the persons being proceeded against any requirement to request a fair evidentiary hearing. On the contrary, the decisions imposed upon the respective states the affirmative duty to schedule and hold same prior to administrative actions that amounted to deprivation of property rights or statutory entitlements.

One of the essential due process procedural requirements is "an impartial decision maker." *Goldberg* v. *Kelly,* 397 U. S. at 271, 90 S. Ct. at 1022. The decision maker at the administrative level in the Kentucky welfare hierarchy is not impartial. He or she

is an employee of the respondent and is subject to the supervision, direction, control, promotion and demotion of the respondent. Another of the essential due process procedural requirements is that "the decision-maker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing." *Goldberg* v. *Kelly,* 397 U. S. at 271, 90 S. Ct. at 1022. The decision-maker at the administrative level in the Kentucky welfare hierarchy is not a lawyer and has no expertise in legal rules of evidence. Therefore, welfare payments should be continued pending an appeal by the recipient seeking judicial review of an administrative decision terminating benefits. As said in *Goldberg* v. *Kelly,* 397 U. S. at 261, 90 S. Ct. at 1017, the need to protect public tax revenues must be measured against the overwhelming brutal need of the destitute welfare recipient whose requirements for survival outweigh fiscal governmental aspects. "The stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great." *Goldberg* v. *Kelly,* 397 U. S. at 266, 90 S. Ct. at 1019.

2. The Instant Case Presents a Justiciable Controversy That Should Be Resolved by This Court

This Court is best able to delineate and apply the true meaning, scope and effect of its own decision in the *Goldberg* case, *supra.* This Court failed to do so in the recent case of *Richardson, Secretary of Health, Education and Welfare* v. *Wright* (February 24, 1972), ___ U. S. ___, 31 L. Ed. 2d 151, 92 S. Ct. ___, which

was remanded to the District Court without judicial action for administrative reprocessing under new Social Security Administration regulations. As pointed out by Mr. Justice Brennan's dissenting opinion in that case, joined in by Mr. Justice Douglas and Mr. Justice Marshall, the question presented therein (which is similar to the question presented in the instant case) "is being pressed all over the country."[1] Mr. Justice Brennan went on to say that under the *Goldberg* rule a fair evidentiary pre-termination hearing must be held before discontinuance of disability benefits being paid under the Social Security Act, and that failure of the Court to decide the question amounted to an abdication of its responsibility to resolve a dispute that is vital to the administration of an essential government program. The language of Mr. Justice Brennan is particularly significant when it is borne in mind that he delivered the opinion of this Court in the *Goldberg* case, *supra*.

Welfare recipients in Kentucky include numerous aged, blind, disabled, retarded and uneducated people. Less than ten percent of them have the advice and assistance of counsel. Most can not be expected to comprehend or comply with legalistic rules requiring affirmative action on their part for making known their objections to proposed discontinuance of their grant or for requesting a fair evidentiary pre-termination hearing. However all would understand a simple written statement of proposed termination, with reasons assigned therefor and notice of a fair evidentiary pre-termination hearing to be held thereon at a certain

[1] A foot-note cites 17 pending cases presenting the question.

time and place. The hearing itself is the best way, and in most instances the only way, to ascertain the objections of recipients to termination of their statutory entitlements, and to hear, even though ever so crudely or incoherently presented, their defenses to the proposed action. Compassionate realism, as well as judicial propriety, demands that this Court resolve the issues presented in the instant controversy.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

ROBERT L. BERTRAM
West Cumberland Avenue
Jamestown, Kentucky 42629

MARTIN R. GLENN
Legal Aid Society of Louisville
422 West Liberty Street
Louisville, Kentucky 40202

Counsel for Petitioner

May 2, 1972